

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 7518

Petition of Vermont Community Wind Farm LLC     )  
for a certificate of public good, pursuant to        )  
30 V.S.A. § 248(j), authorizing the installation and   )  
operation of two temporary wind measurement        )  
towers and associated equipment on Herrick           )  
Mountain in the Town of Ira, Vermont                )

Order entered: 10/16/2009

**ORDER RE MOTION TO RECONSIDER**

**I. INTRODUCTION**

On September 11, 2009, Vermonters for a Clean Environment ("VCE") filed a request for reconsideration of the Certificate of Public Good ("CPG") issued in this docket to Vermont Community Wind Farm LLC ("Vermont Community Wind") authorizing the installation and operation of a temporary wind measurement tower in Ira, Vermont. On September 24, 2009, the Town of Ira filed a letter supporting the request for reconsideration. In their filings, VCE and the Town of Ira requested a stay.

In this Order, we deny VCE's request for reconsideration and VCE's and the Town of Ira's request for stay.

**II. PROCEDURAL HISTORY**

On August 28, 2009, the Public Service Board ("Board") issued a CPG to Vermont Community Wind authorizing the installation and operation of a temporary wind measurement tower and associated equipment on Herrick Mountain in the Town of Ira, Vermont.

On September 11, 2009, VCE filed a letter requesting the Board reconsider its approval of the wind measurement tower in this docket.

On October 2, 2009, Vermont Community Wind filed a response opposing VCE's request for reconsideration.

The Board received nineteen public comments on its decision to grant Vermont Community Wind a CPG authorizing the installation of a temporary wind measurement tower, which are summarized in Section IV of this Order.<sup>1</sup> The Board also received a September 24, 2009, letter from the Town of Ira.

### **III. MOTION TO RECONSIDER**

In its September 11 letter requesting reconsideration, VCE states that the Board "has received substantial information about the company's inappropriate activities in the community and lack of compliance with well-known rules and procedures." VCE presents several reasons why the Board should not have granted Vermont Community Wind a CPG: (1) Vermont Community Wind has provided false and misleading information to the Board in its initial filing; (2) Vermont Community Wind failed to comply with the 45-day notice requirement; (3) Vermont Community Wind has trespassed on private property and placed bird and bat monitoring devices on private property without landowner permission in Ira and Middletown Springs; (4) Vermont Community Wind placed a wind monitoring device on a cell tower on Herrick Mountain without obtaining permits; and (5) Vermont Community Wind submitted lease agreements that do not include deed easement details.

VCE states its disagreement with the Board's conclusion that a public hearing was not necessary in this docket, arguing that the number of public comments received indicated the necessity for a public hearing.

VCE also contends that Vermont Community Wind has raised environmental stewardship issues by its September 10, 2009, activity in Ira. VCE states that Ira residents have encountered Vermont Community Wind contractors carrying wind monitoring equipment who appeared to be lost and asked for directions. VCE argues that, by not providing its contractors with adequate information to conduct their jobs in a manner that is not disruptive to the public, the company has shown a "total disregard for public process, public concerns, and public and private property.

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1. Commenter's filings also addressed the measurement tower in Docket 7526.

VCE requested a stay, so that the proposed wind measurement towers are not to be constructed until all the issues raised in its reconsideration request are addressed and resolved.

In its September 24 letter, the Town of Ira supported the request for reconsideration and requested a public hearing. The Town requested that the CPG should be withdrawn or stayed pending an evidentiary hearing.

In its October 2 response, Vermont Community Wind contends that the inquiry under a motion for reconsideration is limited, and that a reconsideration motion is not a "vehicle for relitigating old issues, presenting the case under new theories," or to "allow parties to correct previous tactical decisions."<sup>2</sup>

Vermont Community Wind argues that VCE's request for reconsideration should be denied because it raises no issues to compel reconsideration and largely repeats earlier claims that are irrelevant to the Board's review of the substantive Section 248 criteria. Vermont Community Wind further contends that VCE's arguments either "try for a second bite at the apple by repeating and repackaging previously presented arguments that are irrelevant and/or unsupported," or improperly address issues for the first time. Vermont Community Wind argues that VCE fails to point to controlling decisions or data that the Board overlooked that could reasonably support reversal.<sup>3</sup>

With regard to VCE's contentions regarding environmental stewardship, Vermont Community Wind contends that the anecdote is irrelevant, hearsay, and inaccurate, and meant to "infect the company's reputation in front of the Board, state agencies, and others."

Vermont Community Wind opposes VCE's request for a stay. Vermont Community Wind argues that VCE has "shown no irreparable harm to itself or others, no likelihood of success on the merits, and no reason why the public interest is served by delaying this project."<sup>4</sup>

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2. Vermont Community Wind cites *Kirkpatrick v. Merit Behavioral Care Corp.*, 128 F. Supp. 2d 186, 190 (D. Vt., 2000); *Drumheller v. Drumheller*, 2009 VT 23 ¶ 29; Docket No. 6651, Order of 10/6/06 at 2.

3. Vermont Community Wind cites *Shrader*, 70 F.3d at 257.

4. Vermont Community Wind cites *In re J.G.*, 160 Vt. 250, 255 n.2 (1993).

#### **IV. PUBLIC COMMENTS**

Nineteen interested parties in the project area submitted comments requesting reconsideration. A few commenters objected to a possible wind generation project. Some called for a public hearing. One commenter requested that the Board conduct a site visit. One commenter requested a stay in the proceeding.

In their requests for reconsideration, commenters also raised the issue of visual impacts, environmental impacts on the proposed access routes, and the impacts of the proposed tree clearings. Some commenters raised concerns about increased traffic on access roads, and economic impact on property values. Other commenters believed that the five-year length of the wind-measurement project was arbitrary and excessive. Several commenters raised concerns that Vermont Community Wind had trespassed on private property and had not obtained permission for access to proposed project properties. A few commenters raised concerns that Vermont Community Wind provided inaccurate and misleading information and had disregard for Vermont laws and procedures. One commenter stated that Vermont Community Wind has installed monitoring equipment on his property on Herrick Mountain without authorization.

#### **V. DISCUSSION AND CONCLUSIONS**

The purpose of a motion for reconsideration is for the Board to reconsider "issues previously before it," and to "examine the correctness of the judgment itself."<sup>5</sup> Reconsideration is not intended to allow a party to present evidence or issues that it failed to present earlier.<sup>6</sup>

In its request for reconsideration, VCE raises concerns with regard to misleading information, the 45-day notice requirement, trespassing, and lease agreements that it raised in previous filings to the Board. The Board addressed these concerns in the August 28 Order.<sup>7</sup> We find the arguments raised in VCE's filing to be unpersuasive and do not conclude that our August 28, 2009, decision was incorrect.

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5. *In re Robinson/Keir Partnership*, 154 Vt. 50, 54 (1990); *see also* Docket No. 6651, *In re Verizon Wireless*, Order of 10/6/06 at 2.

6. *Rubin v. Sterling Enterprises*, 164 Vt. 582, 589 (1996).

7. Our ruling on the 45-day notice requirement is consistent with other Board rulings. *See* Docket 7313, Order of 7/18/07 at 2.

VCE disagrees with the Board's conclusion that a public hearing was not necessary in this docket. As we concluded in our August 28 Order, because the petition effectively addressed the Section 248 criteria and because the comprehensive nature of the public comments received during the Section 248(j) process sufficiently addresses the issues, we continue to conclude that a public hearing is not necessary.

With regard to VCE's concerns about Vermont Community Wind's environmental stewardship, we conclude that the information is unsupported and hearsay. Therefore, we find the arguments in VCE's request unpersuasive and we deny VCE's request for reconsideration.

VCE has requested that we issue a stay until the issues it presents in its request for reconsideration have been addressed and resolved. Because we have denied VCE's request for reconsideration, we also deny its request for a stay.<sup>8</sup>

Most of the public comments raised issues that had been addressed in the August 28 Order. A few commenters raised a new concern regarding the five-year timeframe for operation of the proposed wind measurement tower. This timeframe is supported by the petition and consistent with the Board's approval of other wind measurement towers.

Finally, the August 28 Order authorized Vermont Community Wind to install and operate a temporary wind measurement tower. While measurement towers are necessary precursors for a wind generation facility, the Board's approval of a wind measurement tower is not a prejudgment of any future petition for a wind generation facility. The Board has denied approval of a petition for a wind generation facility after approval of a temporary wind measurement tower.<sup>9</sup> Any subsequent request for approval to construct a wind generation facility will be subject to a separate proceeding and will include a public hearing as part of the Section 248 process.

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8. We also note that VCE and the Town of Ira failed to address the factors to be considered in determining whether to grant a stay. In evaluating a request to stay the effect of a Board order pending an appeal, the Board typically considers four factors: (1) the likelihood of success of the appealing party on the merits; (2) whether the party seeking the stay will suffer irreparable injury if the stay is not granted; (3) whether the issuance of a stay will substantially harm other parties; and (4) the location of the best interests of the public. *See In re Tariff Filing of New England Telephone & Telegraph Co.*, 145 Vt. 309, 488 A.2d 746 (1984). VCE and the Town of Ira do not make any claims regarding these four factors.

9. Docket 6748, Order of 10/4/02, approving wind measurement tower on East Mountain; Docket 6911, Order of 7/17/06, denying the wind generating facility proposed for the site.

**SO ORDERED.**

Dated at Montpelier, Vermont, this 16th day of October, 2009.

<u>s/James Volz</u>	)	
	)	PUBLIC SERVICE
	)	
<u>s/David C. Coen</u>	)	BOARD
	)	
	)	OF VERMONT
<u>s/John D. Burke</u>	)	

OFFICE OF THE CLERK

FILED: October 16, 2009

ATTEST: s/Judith C. Whitney  
Deputy Clerk of the Board

*Notice to Readers: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)*

*Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.*